## **Summary of Comments to Proposed Rule and Responses**

## 10-144 Chapter 101, MaineCare Benefits Manual

# Chapter III, Section 21, Allowances for Home and Community Benefits for members with Intellectual Disabilities or Autistic Disorder

The Department of Health and Human Services held a public hearing on Monday, November 15, 2010 to obtain public comments on proposed rule changes. Written Comments were accepted through Thursday November 25, 2010. This document combines all oral and written comments received during the public comment period ending November 25, 2010.

### **Comments**

1. The commenter stated the rate reduction in the proposed rule is the second rate reduction this year. The commenter stated that in the shared living rate redesign the most costly elements of the service has not been removed from providers who must still bill MaineCare, verify appropriate documentation, participate in reviews by Program Integrity and Audit and assure quality and safety of members. The commenter stated that these activities are time consuming and create a financial liability. The commenter further stated the Department did not conduct appropriate rate reviews and that federal statute requires these reviews to occur. The commenter stated that the Department must rely on responsible cost studies that provide reliable data as a basis for its rate setting based on court decisions (Independent Living Center of So Calif vs. Shewry (State of California)). The commenter stated that these cuts adversely affect services especially in rural Maine and that choice of provider is affected by these cuts. The commenter stated that another court decision stated that payments for services must be consistent to enlist enough providers to provide access to Medicaid recipients (Orthopaedic Hospital vs. Belshe). The commenter stated that the cuts put through are only for budgetary reasons and do not comply with either court decision requirements. The commenter on behalf of MACSP stated opposition to these cuts. (1, 2)

Response- These cuts are required by the Legislature and were included in the budget P.L. 2009, ch. 571, Part A-25, §A-26 and CCCC-3. The functions the commenter listed as time consuming and a financial liability are an expectation of every provider. The Department included the following elements as part of the rate, coordination, respite, training, travel fees (DMV, APS& CPS), billing and administrative fees. The Department requested and received data and information from Providers and based the rate on provider input. The cuts are legislative requirements and representatives from multiple agencies, including the commenters were invited and participated in the facilitated discussion. The Department thanks the commenters for their comments, there were no changes to the provisional rule based on these comments.

2. The commenter stated concern that the administrative duties as outlined in the reorganization of Shared Living will not be fulfilled by Case managers. The duties as outlined in the reorganization are to coordinate, facilitate, complete the person-centered planning process, and visit the member every other month. The commenter stated that case managers have voiced concerns that they will be unable to fulfill these duties and further that they have no intention of complying with the reorganization. The commenter suggested that the oversight duties not be reorganized in the manner which the Department has put forth but instead be a funded covered service and agencies reimbursed for providing the service. (2)

Response-These duties are included in case managers job descriptions and the Department expects these duties to be fulfilled. This comment is beyond the scope of this rulemaking; however policy will be clarified when the Department opens Chapter II, Section 21 in a future rulemaking. The Department thanks the commenters for their comments. There were no changes to the provisional rule based on these comments.

3. The commenter stated that the Department needs to work with agencies and the Department of Labor to resolve the issues about the contractual relationship. The commenter stated that other states do not have these issues and do not require providers to be enrolled with Medicaid in order to be reimbursed. (2)

Response- There has been a governor's taskforce looking at this issue and the Department of Labor will continue to address these issues on a case by case basis. Each states Department of Labor operates independently. The Department thanks the commenter for her comments. There were no changes to the provisional rule based on these comments.

4. The commenter stated concern that more responsibility is being placed on the Shared Living direct support provider without reimbursement to support these duties. (2)

Response-The Department does not concur with this comment. There is still a work group in process and final decision on the structure and responsibilities have yet to be determined. The Department notes the commenter is and has been consistently involved in work group meetings. The Department thanks the commenter for her comments. There were no changes to the provisional rule based on these comments.

5. The commenter stated that the rules were not posted on the OMS website in a timely manner. (1)

Response-The Department does post rules in a timely manner which is not required in the Administrative Procedures Act (APA). The Department does send out mailings as required in the Administrative Procedures Act (APA). In this case, the notice on the Secretary of State's website and mailing was done within the Administrative Procedures Act (APA) requirements. The Department posts rules as promptly as possible but acknowledge that due to technical difficulties sometimes the rules are not posted as promptly as we would want.

#### Commenters

- 1. Mary Lou Dyer, Maine Association of Community Support Providers \*\*
- 2. Bridget C. McCabe, Residential Resources

<sup>\*\*</sup>Commenter offered both oral and written comments